

CHAPTER 1036

GUARDIANSHIPS AND CONSERVATORSHIPS — NOTICE — COUNSEL

H.F. 2240

AN ACT relating to notice and the appointment of counsel in guardianship and conservatorship proceedings.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 633.554, Code 1999, is amended to read as follows:

633.554 NOTICE TO PROPOSED WARD.

1. a. If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

b. ~~Except where the proposed ward is the petitioner, notice shall also be served upon the ward's spouse. If the proposed ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.~~

2. a. If the proposed ward is a minor or if the proposed ward is an adult under a standby petition and the court determines, pursuant to section 633.561, subsection 1, paragraph "b", that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

b. Notice shall also be served upon:

(1) The parents of the proposed ward, if the proposed ward is a minor.

(2) The spouse of the proposed ward, if the proposed ward is an adult. If the proposed ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

3. Service of notice under this section upon persons other than the proposed ward shall be made upon such persons whose identities are reasonably ascertainable pursuant to section 633.40, subsection 5. Proof of service shall be made by affidavit, to which copies of all documents served shall be attached.

Sec. 2. Section 633.561, subsection 1, Code 1999, is amended to read as follows:

1. In a proceeding for the appointment of a guardian, ~~if:~~

a. ~~If the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. In a proceeding for the appointment of a guardian, if~~ Upon the filing of the petition, the court shall appoint an attorney to represent the proposed ward, set a hearing on the petition, and provide for notice of the appointment of counsel and the date for hearing.

b. ~~If the proposed ward is either a minor or if the proposed ward is an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation shall may be made only after with or without notice to the proposed ward, is made as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.~~

c. ~~The court may take action under paragraph "a" or "b" prior to the service of the original notice upon the proposed ward.~~

d. ~~The court may reconsider the determination regarding representation upon application by any interested person.~~

e. ~~The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.~~

Sec. 3. Section 633.562, Code 1999, is amended to read as follows:
633.562 NOTIFICATION OF GUARDIANSHIP POWERS.

In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice which advises the proposed ward that if a guardian is appointed, the guardian may, without court approval, provide for the care of the ward, manage the ward's personal property and effects, assist the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the court's approval, the guardian may change the ward's permanent residence to a more restrictive residence, and arrange for major elective surgery or any other nonemergency major medical procedure. The notice shall clearly advise the proposed ward in boldfaced type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the court. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.554.

Sec. 4. Section 633.568, Code 1999, is amended to read as follows:
633.568 NOTICE TO PROPOSED WARD.

1. a. If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

b. Except where the ward is the petitioner, notice shall also be served upon the ward's spouse. If the ward has no spouse, notice shall be served upon the ward's adult children, if any.

2. a. If the proposed ward is a minor and the court determines, pursuant to section 633.575, subsection 1, paragraph "b", that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

b. Notice shall also be served upon the parents of the proposed ward.

3. Service of notice under this section upon persons other than the proposed ward shall be made upon such persons whose identities are reasonably ascertainable pursuant to section 633.40, subsection 5. Proof of service shall be made by affidavit, to which copies of all documents served shall be attached.

Sec. 5. Section 633.575, subsection 1, Code 1999, is amended to read as follows:

1. In a proceeding for the appointment of a conservator, ~~if:~~

a. If the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. Upon the filing of the petition, the court shall appoint an attorney to represent the proposed ward, set a hearing on the petition, and provide for notice of the appointment of counsel and the date for hearing.

b. ~~In a proceeding for the appointment of a conservator, if~~ If the proposed ward is either a minor or where the proposed ward is an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation shall may be made only after with or without notice to the proposed ward, is made as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.

c. The court may take action under paragraph "a" or "b" prior to the service of the original notice upon the proposed ward.

d. The court may reconsider the determination regarding representation upon application by any interested person.

e. The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

Sec. 6. Section 633.576, Code 1999, is amended to read as follows:

633.576 NOTIFICATION OF CONSERVATORSHIP POWERS.

In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advises the proposed ward that if a conservator is appointed, the conservator may, without court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the court determines is in the ward's best interests. The notice shall clearly advise the proposed ward, in boldfaced type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the court. In an involuntary conservatorship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.568.

Approved March 31, 2000

CHAPTER 1037

ESCAPE AND ABSENCE FROM CUSTODY — JURISDICTION

H.F. 2253

AN ACT relating to state criminal jurisdiction and to the crimes of escape and absence from custody.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 719.4, subsections 1 and 2, Code Supplement 1999, are amended to read as follows:

1. A person convicted of a felony, or charged with or arrested for the commission of a felony, who intentionally escapes, or attempts to escape, from a detention facility, community-based correctional facility, or institution to which the person has been committed by reason of the conviction, charge, or arrest, or from the custody of any public officer, ~~or public employee,~~ or any other person to whom the person has been entrusted, commits a class "D" felony.

2. A person convicted of, charged with, or arrested for a misdemeanor, who intentionally escapes, or attempts to escape, from a detention facility, community-based correctional facility, or institution to which the person has been committed by reason of the conviction, charge, or arrest, or from the custody of any public officer, ~~or public employee,~~ or any other person to whom the person has been entrusted, commits a serious misdemeanor.